

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: WORLD TRADE CENTER DISASTER SITE
LITIGATION

21 MC 100 (AKH)

KENNETH CAPOBIANCO AND MICHELE
CAPOBIANCO,

06 Civ.

Plaintiff(s),

Hon. Alvin K. Hellerstein, U.S.D.J.

-against-

NOTICE OF REMOVAL

1 WORLD TRADE CENTER LLC, ET AL.,

Defendants.

PLEASE TAKE NOTICE that AMEC CONSTRUCTION MANAGEMENT, INC., BOVIS LEND LEASE LMB, INC., TULLY CONSTRUCTION CO., INC., AND TURNER CONSTRUCTION COMPANY (collectively “Defendants”) hereby remove the above-entitled action (the “Action”) from the Supreme Court of the State of New York, County of New York to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1441, § 1442(a)(1), § 1446(a), § 1446(b) and the Air Transportation Safety and System Stabilization Act, Public Law No. 107-42, § 401 *et seq.*, 115 Stat. 230 (2001) (the “ATSSSA”) (codified as amended at 49 U.S.C. §40101 (2001)).

In support of this Notice of Removal, Defendants state:

1. On or about October 3, 2006, Plaintiff(s) filed a Summons with Notice in the Supreme Court of the State of New York, County of New York. Plaintiff(s) assert claims resulting from, relating to, and arising out of the terrorist-related aircraft crashes of September

11, 2001. A true copy of the Summons with Notice is attached to this Notice of Removal.

2. On or about November 20, 2006, Defendants received the Summons with Notice in this Action bearing Index Number 114761/06.

3. Because these claims arise out of Plaintiff(s)' alleged injuries resulting from, relating to, and arising out of the September 11, 2001 terrorist-related aircraft crashes, the United States District Court for the Southern District of New York has original and exclusive jurisdiction over the Action. Specifically in response to the tragic events of September 11, 2001, Congress enacted the ATSSSA on September 22, 2001, which created a comprehensive scheme addressing numerous matters resulting from the attacks. Section 408(b) of the ATSSSA contains a broad jurisdictional provision centralizing in the Southern District of New York the resolution of any litigation claims resulting from or relating to the events of September 11, 2001:

The United States District Court for the Southern District of New York shall have original and exclusive jurisdiction over all actions brought for any claim (including any claim for loss of property, personal injury, or death) resulting from or relating to the terrorist-related aircraft crashes of September 11, 2001.

Pub. L. No. 107-42, § 408(b)(3), 115 Stat. 230, 241 (2001).

4. In addition, Section 408(b)(1) of the ATSSSA creates a federal cause of action over which this Court has original jurisdiction. It provides:

There shall exist a Federal cause of action for damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 and 77, and United Airlines flights 93 and 175, on September 11, 2001. Notwithstanding section 40120(c) of title 49, United States Code, this cause of action shall be the exclusive remedy for damages arising out of the hijacking and subsequent crashes of such flights.

Pub. L. No. 107-42, § 408(b)(1), 115 Stat. 230, 240-241 (2001).

5. Furthermore, In *In re: WTC Disaster Site*, the United States Court of Appeals for the

Second Circuit conclusively recognized the original and exclusive jurisdiction in the Southern District of New York for claims relating to the terrorist-related aircraft crashes of September 11, 2001. *See In re: WTC Disaster Site*, 414 F.3d 352, 375–380 (2d Cir. 2005).

6. Based on the foregoing, the Action is removable from the Supreme Court of the State of New York, County of New York to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1441.

7. The Action is also removable based upon 28 U.S.C. § 1442(a)(1). Section 1442(a)(1) provides:

(a) A civil action . . . commenced in a State court against any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, sued in an official or individual capacity for any act under color of such office

8. Federal agencies and officers exercised control over particular health, safety and other issues relating to the rescue, recovery, cleanup, debris removal and/or construction efforts at the World Trade Center (“WTC”) site following the attacks on September 11, 2001.

9. Defendants complied with the directives of those federal agencies and officers in performing these activities at the WTC site, and therefore have at least a colorable federal immunity defense.

10. Moreover, because the federal agencies and officers exercised control over these issues, a causal nexus exists between the Plaintiff(s)’ claims and Defendants’ alleged activities.

11. Therefore, the Action is removable from the Supreme Court of the State of New York, County of New York to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1442(a)(1).

12. Consent of all defendants to removal here is unnecessary as § 408(b)(1) of the ATSSSA provides for original and exclusive jurisdiction in the Southern District of New York for claims relating to the terrorist-related aircraft crashes of September 11, 2001. Pub. L. No. 107-42, § 408(b)(3), 115 Stat. 230, 241 (2001); *Ackerman v. Nat'l. Property Analysts*, 1992 WL 84477 at *1 (S.D.N.Y. 1992). Consent of all defendants here is also unnecessary pursuant to § 1442(a)(1). *Bradford v. Harding*, 284 F.2d 307, 310 (2d Cir. 1960).

13. Defendants' Notice of Removal is timely as the Notice of Removal will be filed within thirty days of Defendants' receipt of the Summons with Notice. *See* 28 U.S.C. §1446(b).

14. A copy of this Notice of Removal will be filed with the Supreme Court of the State of New York, County of New York, and will be served on Plaintiff(s)' counsel pursuant to 28 U.S.C. § 1446(d).

15. Pursuant to Rule 81.1(b) of the local civil rules for the Southern District of New York, Defendants will forward a copy of all records and proceedings in the Supreme Court of the State of New York, County of New York within 20 days.

16. Defendants reserve the right to amend or supplement this Notice of Removal.

WHEREFORE, Defendants hereby remove to this Court the action now pending against them in the Supreme Court of the State of New York, County of New York, bearing Index No. 114761/06.

Dated: Newark, New Jersey
December 8, 2006

PATTON BOGGS LLP

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
KENNETH CAPOBIANCO AND MICHELE
CAPOBIANCO,

SUMMONS WITH NOTICE

Plaintiff(s),

114761/06
Index No:

-against-

1 WORLD TRADE CENTER LLC, ET AL.
(SEE ATTACHED RIDER)

Defendant(s).

-----X
To the above-named defendant(s):

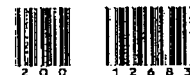
You are hereby summoned and required to serve upon plaintiff's/plaintiffs' attorney, at the address stated below, a notice of appearance or demand for a complaint.

If this summons was personally delivered upon you in the State of New York, the answer must be served within twenty days after such service of the summons, excluding the date of service. If the summons was not personally delivered to you within the State of New York, the answer must be served within thirty days after service of the summons is complete as provided by law.

The nature of this action is to recover money damages and any other relief that the Court deems just and proper for exposure to toxic contaminants, including but not limited to: fumes, gasses, mists, vapors, dust, fibers, particles, substances, and/or radiation at or around the World Trade Center Site, Ground Zero, Fresh Kills Landfill, and/or in the area and buildings surrounding the World Trade Center Site following terrorist attacks on September 11, 2001. This exposure caused plaintiff's/plaintiffs' injuries, including but not limited to: acid reflux disease, asthma, Barrets Esophagus, bronchial inflammation, bronchitis, bullous disease of the lungs, cancer, chemical pneumonitis, chronic bronchitis, chronic cough, chronic laryngitis, chronic pneumonia, chronic rhinitis, chronic sinusitis, chronic obstructive pulmonary disease (COPD), emphysema, gastroesophageal disease (GERD), hearing loss, laryngitis, malignant mesothelioma, nasal polyps, neurological problems, peritonsillar cellulitis, pharyngitis, pneumonia, polyps on the larynx, polyps on the throat, reactive airway dysfunction syndrome (RADS), rhinitis, sarcoidosis, silicosis, sinus polyps, sinusitis, ulcerative colitis, vocal chord dysfunction, and exacerbation of a prior existing condition or conditions.

Your action(s) and/or failure to act, constitutes carelessness, negligence and/or recklessness, and is the sole and proximate cause of plaintiff's/plaintiffs' toxic exposure, and resulting injuries, illnesses and damages.

Your failure and/or the failure of your agents, servants, representatives and/or employees to comply with, including but not limited to, the following: General Municipal Law of the State of New York §205-e and §205-a; the Occupational Safety and Health Act, 29 U.S.C. §§ 654 et seq.; Occupational Safety and Health Administration (OSHA) standards, including but not limited to, 29 C.F.R. §1910



Subparts H, I, J, K and Z, and specifically 29 C.F.R. §§1910.38, 1910.120, 1910.132-134, 1910.146, 1910.156, 1910.1001, 1910.1025, 1910.1027, 1910.1000 and 1910.1200; 29 C.F.R. §1926 Subparts C, D, E, F, G, H, I, J and Z; The New York Industrial Code, including but not limited to: §§23-1.5, 23-1.7, 23-1.8, 23-1.9, 23-1.25, 23-1.26 and 23-2.1; New York State Labor Law, including but not limited to: §§200, 240, 241(6), Article 2, §27-a, Article 28; 12 N.Y.C.R.R. §820.4; and other applicable Federal, State and local rules, regulations, ordinances and statutes is the proximate cause of plaintiff's/plaintiffs' injuries, toxic exposure and resulting damages.

If you do not serve a notice of appearance or demand for a complaint within the applicable time limitation stated above, a judgment may be entered against you, by default, for a sum greater than the jurisdictional limits of all lower courts, with interest, and the costs and disbursements of this action.

The action will be heard in the Supreme Court of the State of New York, in and for the County of New York. The basis of venue is N.Y. C.P.L.R. §509.

Dated: New York, New York
October 2, 2006



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KENNETH CAPOBIANCO AND MICHELE CAPOBIANCO,

PLAINTIFFS,

- AGAINST -

1 WORLD TRADE CENTER LLC; 1 WTC HOLDINGS LLC; 2 WORLD TRADE CENTER LLC; 2 WTC HOLDINGS LLC; 4 WORLD TRADE CENTER LLC; 4 WTC HOLDING LLC; 5 WORLD TRADE CENTER LLC; 5 WTC HOLDING LLC; 7 WORLD TRADE COMPANY, L.P.; A RUSSO WRECKING, INC.; ABM INDUSTRIES, INC.; ABM JANITORIAL NORTHEAST, INC.; AMEC CONSTRUCTION MANAGEMENT, INC.; AMEC EARTH & ENVIRONMENTAL, INC.; ANTHONY CORTESI SPECIALIZED HAULING LLC; ATLANTIC HEYDT CORP.; BECHTEL ASSOCIATES PROFESSIONAL CORPORATION; BECHTEL CONSTRUCTION, INC.; BECHTEL CORPORATION; BECHTEL ENVIRONMENTAL, INC.; BERKEL & COMPANY, INC.; CONTRACTORS, INC.; BIG APPLE WRECKING & CONSTRUCTION CORP.; BOVIS LEND LEASE LMB, INC.; BOVIS LEND LEASE, INC.; BREEZE CARTING CORP.; BREEZE NATIONAL INC.; BRER-FOUR TRANSPORTATION CORP.; BURO HAPPOLD CONSULTING ENGINEERS, P.C.; C.B. CONTRACTING CORP.; CANRON CONSTRUCTION CORP.; CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.; CORD CONTRACTING CO., INC.; CRAIG TEST BORING COMPANY INC.; DAKOTA DEMO-TECH; DIAMOND POINT EXCAVATING CORP.; DIEGO CONSTRUCTION, INC.; DIVERSIFIED CARTING, INC.; DMT ENTERPRISE, INC. D'ONOFRIO GENERAL CONTRACTORS CORP.; EAGLE LEASING & INDUSTRIAL SUPPLY, INC.; EAGLE ONE ROOFING CONTRACTORS INC.; EAGLE SCAFFOLDING CO., INC.; EJ DAVIES, INC.; EN-TECH CORP.; ET ENVIRONMENTAL; EVERGREEN RECYCLING OF CORONA(EROC); EWEILL W. FINLEY, P.C.; EXECUTIVE MEDICAL SERVICES, P.C.; F&G MECHANICAL, INC.; FLEET TRUCKING, INC.; FRANCIS A. LEE EXTERIOR RESTORATION, INC.; FTI TRUCKING, INC.; GILSANZ, MURRAY, & STEFICEK, LLP, GOLDSTEIN ASSOCIATES CONSULTING ENGINEERS, PLLC.; HALLEN WELDING SERVICE, INC.; H.P. ENVIRONMENTAL; KOCH SKANSKA INC; LAQUILA CONSTRUCTION INC.; LASTRADA GENERAL CONTRACTING CORP.; LESLIE E. ROBERTSON ASSOCIATES CONSULTING ENGINEERS P.C.; LIBERTY MUTUAL GROUP; LOCKWOOD, KESSLER & BARTLETT, INC.; LUCIUS PITKIN, INC.; LZA TECH-DIV OF THORTON TOMASETTI; MANAFORT BROTHERS INCORPORATED; MAZZOCCHI WRECKING, INC.; MERIDIAN CONSTRUCTION CORP.; MORETRENCH AMERICAN CORP.; MRA ENGINEERING, PC; MUESER RUTLEDGE CONSULTING ENGINEERS, INC.; NACIREMA INDUSTRIES INCORPORATED; NEW YORK CRANE & EQUIPMENT CORP.; NICHOLSON CONSTRUCTION COMPANY; PETER SCALAMANDRE & SONS, INC.; PINNACLE ENVIRONMENTAL CORP.; PLAZA CONSTRUCTION CORP.; PRO SAFETY SERVICES LLC.; PT & L CONTRACTING CORP.; REGIONAL SCAFFOLDING & HOISTING CO., INC.; ROBER SILMAN ASSOCIATES; ROBERT L. GEROSA, INC.; RODAR ENTERPRISES, INC.; ROYAL GM, INC.; SAB TRUCKING INC.; SAFEWAY ENVIRONMENTAL CORP.; SEASONS INDUSTRIAL CONTRACTING; SEMCOR EQUIPMENT & MANUFACTURING CORP.; SILVERITE CONTRACTING CORPORATION; SILVERSTEIN DEVELOPMENT CORP; SILVERSTEIN PROPERTIES INC; SILVERSTEIN PROPERTIES; SILVERSTEIN WTC FACILITY MANAGER LLC.; SILVERSTEIN WTC LLC; SILVERSTEIN WTC MGMT CO. LLC.; SILVERSTEIN WTC PROPERTIES LLC.; SILVERSTEIN WTC, LLC a/k/a SILVERSTEIN WTC PROPERTY; SIMPSON GUMPERTZ & HEGER INC.; SKIDMORE, OWING & MERRILL LLP; SURVIVAIR; TISHMAN CONSTRUCTION CORPORATION OF MANHATTAN; TISHMAN CONSTRUCTION CORPORATION OF NEW YORK; TISHMAN INTERIORS CORPORATION; TISHMAN SPEYER PROPERTIES; THORTON-TOMASETTI GROUP, INC.; TORRETTA TRUCKING, INC.; TOTAL SAFETY CONSULTING, L.L.C.; TUCCI EQUIPMENT RENTAL CORP.; TULLY CONSTRUCTION CO., INC.; TULLY CONSTRUCTION COMPANY; TULLY ENVIRONMENTAL INC.; TULLY INDUSTRIES, INC.; TURNER CONSTRUCTION CO.; TURNER CONSTRUCTION COMPANY; ULTIMATE DEMOLITION/CS HAULING (JOINT VENTURE); VERIZON NEW YORK INC; VOLLMER ASSOCIATES LLP.; W HARRIS & SONS INC.; WEEKS MARINE, INC.; WEIDLINGER ASSOCIATES, CONSULTING ENGINEERS, P.C.; WHITNEY CONTRACTING INC.; WOLKOW-BRAKER ROOFING CORP.; WORLD TRADE CENTER PROPERTIES LLC; WSP CANTOR SEINUK; YANNUZZI & SONS, INC.; YONKERS CONTRACTING COMPANY, INC.; YORK HUNTER CONSTRUCTION, LLC; ZIEGENFUSS DRILLING, INC.,

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BREEZE NATIONAL, INC., 31 Bay Street Brooklyn, NY 11231	LASTRADA GENERAL CONTRACTING CORP C/O Patton Boggs, LLP 1 Riverfront Plaza, 6 th Floor Newark, NJ 07102	SILVERSTEIN PROPERTIES C/O Edward Tanenhouse, Esq. 7 World Trade Center 38th Floor New York, NY 10048	WOLKOW-BRAKER ROOFING CORP C/O Patton Boggs, LLP 1 Riverfront Plaza, 6 th Floor Newark, NJ 07102
BRER-FOUR TRANSPORTATION CORP. C/O Patton Boggs, LLP 1 Riverfront Plaza, 6 th Floor Newark, NJ 07102	LESLIE E. ROBERTSON ASSOCIATES CONSULTING ENGINEER P.C. C/O Patton Boggs, LLP 1 Riverfront Plaza, 6 th Floor Newark, NJ 07102	SILVERSTEIN WTC FACILITY MANAGER LLC C/O Edward Tanenhouse, Esq. 7 World Trade Center 38th Floor New York, NY 10048	WORLD TRADE CENTER PROPERTIES LLC C/O Edward Tanenhouse, Esq. 7 World Trade Center 38th Floor New York, NY 10048
BURO HAPPOLD CONSULTING ENGINEERS, P.C., C/O Patton Boggs, LLP 1 Riverfront Plaza, 6 th Floor Newark, NJ 07102	LIBERTY MUTUAL GROUP C/O CT CORPORATION SYSTEM 111 Eighth Avenue New York, NY 10011	SILVERSTEIN WTC LLC C/O Edward Tanenhouse, Esq. 7 World Trade Center 38th Floor New York, NY 10048	WSP CANTOR SEINUK GROUP C/O Patton Boggs, LLP 1 Riverfront Plaza, 6 th Floor Newark, NJ 07102
C.B. CONTRACTING CORP C/O Patton Boggs, LLP 1 Riverfront Plaza, 6 th Floor	LOCKWOOD KESSLER & BARTLETT, INC. C/O Patton Boggs, LLP 1 Riverfront Plaza, 6 th Floor Newark, NJ 07102	SILVERSTEIN WTC MGMT CO LLC C/O Edward Tanenhouse, Esq.	YANNUZZI & SONS INC 56 Oakwood Avenue Orange, NJ 07050
			YONKERS CONTRACTING



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ATTORNEY VERIFICATION

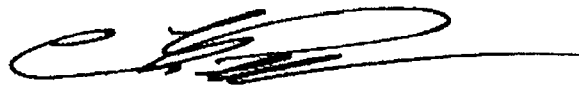
CHRISTOPHER R. LOPALO, an attorney at law, duly admitted to practice in the Courts of the State of New York, affirms under the penalties of perjury that:

He is the attorney for the plaintiff(s) in the above-entitled action. That he has read the foregoing SUMMONS WITH NOTICE and knows the contents thereof, and upon information and belief, deponent believes the matters alleged therein to be true.

The reason this Verification is made by deponent and not by the plaintiff(s) is that the plaintiff(s) herein reside(s) in a county other than the one in which the plaintiff's attorneys maintain their office.

The source of deponent's information and the grounds of his belief are communication, papers, reports and investigation contained in the file.

DATED: New York, New York
October 2, 2006



CHRISTOPHER R. LOPALO, Esq.



Index No:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

KENNETH CAPOBIANCO (AND WIFE, MICHELE CAPOBIANCO),

Plaintiff(s)

- against -

1 WORLD TRADE CENTER LLC, ET. AL.,

Defendant(s).

SUMMONS WITH NOTICE

WORBY GRONER EDELMAN & NAPOLI BERN, LLP

Attorneys for: Plaintiff(s)

Office and Post Office Address, Telephone

115 Broadway - 12th Floor

New York, New York 10006

(212) 267-3700

To
Attorney(s) for

Service of a copy of the within
is hereby admitted.

Dated,

Attorney(s) for

PLEASE TAKE NOTICE:

☐ **NOTICE OF ENTRY**

that the within is a (certified) true copy of an
duly entered in the office of the clerk of the within named court on 20

☐ **NOTICE OF SETTLEMENT**

that an order _____ of which the within is a true copy
will be presented for settlement to the HON. _____ one of the

judges of the

within named Court, at

on 20 at _____ M.

Dated,

Yours, etc.,

WORBY GRONER EDELMAN & NAPOLI BERN, LLP

